

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-295
HOUSE BILL 382

AN ACT AMENDING THE JUVENILE CODE UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200(a) is amended by adding a new subdivision to read:

"(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

...
(4a) Proceedings for reinstatement of parental rights.
...."

SECTION 2. G.S. 7B-503(a) reads as rewritten:

"(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and any of the following apply:

- (1) The juvenile has been ~~abandoned; or~~ abandoned.
- (2) The juvenile has suffered physical injury or sexual ~~abuse; or~~ abuse.
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or ~~protection; or~~ protection.
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical ~~treatment; or~~ treatment.
- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody ~~order; or~~ order.
- (6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody."

SECTION 3. G.S. 7B-507 reads as rewritten:

"§ 7B-507. **Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

...



- (4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency department is to provide or arrange for the foster care or other placement of the juvenile; and juvenile. After considering the department's recommendations, the court may order a specific placement the court finds to be in the juvenile's best interest; and

...
A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

...
(c) ~~At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing. At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian, or custodian or that parent, guardian, or custodian's counsel may give notice to preserve the parent, guardian, or custodian's right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5). Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that person sought to offer in opposition to cessation of reunification that the court refused to admit as evidence or to consider. When the court determines that reunification efforts are not required or shall cease, the court shall order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the court's determination to cease reunification efforts is made in a hearing that was duly and timely noticed as a permanency planning hearing, then the court may immediately proceed to consider all of the criteria contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to achieve a safe, permanent home within a reasonable period of time. If the court's decision to cease reunification efforts arises in any other hearing, the court shall schedule a subsequent hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that party sought to offer in opposition to cessation of reunification that the court refused to admit.~~

...."

SECTION 4. G.S. 7B-600(b) reads as rewritten:

"(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, juvenile and the guardian is a party to the proceeding, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition under G.S. 7B-906 or G.S. 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

- (1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person of the juvenile and give testimony concerning its investigation.
- (2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian.
- (3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.
- (4) Take any other action necessary in order to make a determination in a particular case."

SECTION 5. G.S. 7B-801 is amended by adding a new subsection to read:

"(b1) Nothing in this Subchapter precludes the court in an abuse, neglect, or dependency proceeding from entering a consent adjudication order, disposition order, review order, or permanency planning order when each of the following apply:

- (1) All parties are present or represented by counsel, who is present and authorized to consent.
- (2) The juvenile is represented by counsel.
- (3) The court makes sufficient findings of fact."

SECTION 6. G.S. 7B-807(a) reads as rewritten:

"(a) If the court finds from the evidence, including stipulations by a party, that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. A record of specific stipulated adjudicatory facts shall be made by either reducing the facts to a writing, signed by each party stipulating to them and submitted to the court; or by reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker."

SECTION 7. G.S. 7B-901 reads as rewritten:

"§ 7B-901. Dispositional hearing.

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing paternity. The court shall also inquire about efforts made to identify and notify relatives as potential resources for placement or support."

SECTION 8. G.S. 7B-902 is repealed.

SECTION 9. G.S. 7B-905(a) reads as rewritten:

"(a) The dispositional order shall be in writing, signed, and entered no later than 30 days from the completion of the hearing, and shall contain appropriate findings of fact and

conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 10. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

...
(c) The court shall consider at least the following in its ~~review~~review and make written findings regarding the following that are relevant:

- (1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such ~~plan~~plan.
- (2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption ~~agency~~and agency.
- (3) The efforts previously made by the department or agency to find a permanent home for the juvenile.
- (4) Whether the current placement is in the juvenile's best interest.

(d) The court, after making findings of fact, shall do one of the following:

- (1) ~~affirm~~Affirm the county department's or child-placing agency's ~~plans~~or plans.
- (2) If a juvenile is not placed with prospective adoptive parents, order a placement or different plan the court finds to be in the juvenile's best interest after considering the department's recommendations.

In either case, the court may require specific additional steps ~~which~~that are necessary to accomplish a permanent placement ~~which~~that is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

~~(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child placing agency. The guardian ad litem may request information from and consult with the county department or child placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Within 10 days of receiving a copy of the adoption petition, the county department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption~~

~~proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file."~~

SECTION 11. G.S. 7B-1001 reads as rewritten:

"§ 7B-1001. Right to appeal.

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

- ...
- (5) An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:
- a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:
1. A motion or petition to terminate the parent's rights is heard and granted.
 2. The order terminating parental rights is appealed in a proper and timely manner.
 3. The order to cease reunification is ~~assigned as an~~ error identified as an issue in the record on appeal of the termination of parental rights.

...

~~(b) Except for orders covered in subdivision (a)(5) of this section, notice~~ Notice of appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58. ~~Notice of appeal for orders covered in subdivision (a)(5) of this section shall be given in writing by a proper party as defined in G.S. 7B-1002.~~

...."

SECTION 12. G.S. 7B-1105(b) reads as rewritten:

"(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may ~~appoint a guardian ad litem for the unknown parent to~~ order the petitioner to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106."

SECTION 13. G.S. 7B-1106(b)(5) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- ...
- (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the ~~clerk~~ petitioner upon filing of the answer or 30 days from the date of service if no answer is filed; and"

SECTION 14. G.S. 7B-1108(a) reads as rewritten:

"(a) Any respondent may file a written answer to the petition or written response to the motion. Only a district court judge may grant an extension of time in which to answer or respond. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney."

SECTION 15. G.S. 7B-1109(f) reads as rewritten:

"(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. The rules of evidence

in civil cases shall apply. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights."

SECTION 16. G.S. 7B-1110(a) reads as rewritten:

"(a) After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. ~~In making this determination, the court shall consider the following:~~The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 17. G.S. 7B-1112(1) reads as rewritten:

"§ 7B-1112. Effects of termination order.

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

- (1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the ~~juvenile~~ juvenile, except as otherwise provided in G.S. 7B-908(d), as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

...."

SECTION 18. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new sections to read:

"§ 7B-1112.1. Selection of adoptive parents.

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing

agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five business days. The county department of social services shall notify the guardian ad litem of the selection of prospective adoptive parents within 10 days of the selection and before the filing of the adoption petition. If the guardian ad litem disagrees with the selection of adoptive parents, the guardian ad litem shall file a motion within 10 days of the department's notification and schedule the case for hearing on the next juvenile calendar. The department shall not change the juvenile's placement to the prospective adoptive parents unless the time period for filing a motion has expired and no motion has been filed. In hearing the motion, the court shall consider the recommendations of the agency and the guardian ad litem and other facts related to the selection of adoptive parents. The court shall then determine whether the proposed adoptive placement is in the juvenile's best interests.

"§ 7B-1114. Reinstatement of parental rights.

(a) A juvenile whose parent's rights have been terminated pursuant to this Article, the guardian ad litem attorney, or a county department of social services with custody of the juvenile may file a motion to reinstate the parent's rights if all of the following conditions are satisfied:

- (1) The juvenile is at least 12 years of age or, if the juvenile is younger than 12, the motion alleges extraordinary circumstances requiring consideration of the motion.
- (2) The juvenile does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time.
- (3) The order terminating parental rights was entered at least three years before the filing of the motion, unless the court has found or the juvenile's attorney advocate and the county department of social services with custody of the juvenile stipulate that the juvenile's permanent plan is no longer adoption.

(b) If a motion could be filed under subsection (a) of this section and the parent whose rights have been terminated contacts the county department of social services with custody of the juvenile or the juvenile's guardian ad litem regarding reinstatement of the parent's rights, the department or the guardian ad litem shall notify the juvenile that the juvenile has a right to file a motion for reinstatement of parental rights.

(c) If a motion to reinstate parental rights is filed and the juvenile does not have a guardian ad litem appointed pursuant to G.S. 7B-601, the court shall appoint a guardian ad litem to represent the best interests of the juvenile. The appointment, duties, and payment of the guardian ad litem and the guardian ad litem attorney shall be the same as in G.S. 7B-601 and G.S. 7B-603.

(d) The party filing a motion to reinstate parental rights shall serve the motion on each of the following who is not the movant:

- (1) The juvenile.
- (2) The juvenile's guardian ad litem or the guardian ad litem attorney.
- (3) The county department of social services with custody of the juvenile.
- (4) The former parent whose rights the motion seeks to have reinstated.

A former parent who is served under this subsection is not a party to the proceeding and is not entitled to appointed counsel but may retain counsel at the former parent's own expense.

(e) The movant shall ask the clerk to calendar the case for a preliminary hearing on the motion for reinstatement of parental rights within 60 days of the filing of the motion at a session of court scheduled for the hearing of juvenile matters. The movant shall give at least 15 days' notice of the hearing and state its purpose to the persons listed in subdivisions (d)(1) through (d)(4) of this section. In addition, the movant shall send a notice of the hearing to the juvenile's placement provider. Nothing in this section shall be construed to make the former

parent or the juvenile's placement provider a party to the proceeding based solely on being served with the motion or receiving notice and the right to be heard.

(f) At least seven days before the preliminary hearing, the department of social services and the juvenile's guardian ad litem shall provide to the court, the other parties, and the former parent reports that address the factors specified in subsection (g) of this section.

(g) At the preliminary hearing and any subsequent hearing on the motion, the court shall consider information from the county department of social services with custody of the juvenile, the juvenile, the juvenile's guardian ad litem, the juvenile's former parent whose parental rights are the subject of the motion, the juvenile's placement provider, and any other person or agency that may aid the court in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and whether reinstatement is in the juvenile's best interest. The court shall consider the following criteria and make written findings regarding the following that are relevant:

- (1) What efforts were made to achieve adoption or a permanent guardianship.
- (2) Whether the parent whose rights the motion seeks to have reinstated has remedied the conditions that led to the juvenile's removal and termination of the parent's rights.
- (3) Whether the juvenile would receive proper care and supervision in a safe home if placed with the parent.
- (4) The age and maturity of the child and the ability of the child to express the child's preference.
- (5) The parent's willingness to resume contact with the juvenile and to have parental rights reinstated.
- (6) The juvenile's willingness to resume contact with the parent and to have parental rights reinstated.
- (7) Services that would be needed by the juvenile and the parent if the parent's rights were reinstated.
- (8) Any other criteria the court deems necessary.

(h) At the conclusion of the preliminary hearing, the court shall either dismiss the motion or order that the juvenile's permanent plan become reinstatement of parental rights. If the court does not dismiss the motion, the court shall conduct interim hearings at least every six months until the motion is granted or dismissed. Interim hearings may be combined with posttermination of parental rights review hearings required by G.S. 7B-908. At each interim hearing, the court shall assess whether the plan of reinstatement of parental rights continues to be in the juvenile's best interest and whether the department of social services has made reasonable efforts to achieve the permanent plan.

(i) At any hearing under this section, after making proper findings of fact and conclusions of law, the court may do one of the following:

- (1) Enter an order for visitation in accordance with G.S. 7B-905(c).
- (2) Order that the juvenile be placed in the former parent's home and supervised by the department of social services either directly or, when the former parent lives in a different county, through coordination with the county department of social services in that county, or by other personnel as may be available to the court, subject to conditions applicable to the former parent as the court may specify. Any order authorizing placement with the former parent shall specify that the juvenile's placement and care remain the responsibility of the county department of social services with custody of the juvenile and that the department is to provide or arrange for the placement of the juvenile.

(j) The court shall either dismiss or grant a motion for reinstatement of parental rights within 12 months from the date the motion was filed, unless the court makes written findings why a final determination cannot be made within that time. If the court makes such findings, the court shall specify the time frame in which a final order shall be entered.

(k) An order reinstating parental rights restores all rights, powers, privileges, immunities, duties, and obligations of the parent as to the juvenile, including those relating to custody, control, and support of the juvenile. If a parent's rights are reinstated, the court shall be relieved of the duty to conduct periodic reviews.

(l) An order shall be entered no later than 30 days following the completion of any hearing pursuant to this section. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(m) The granting of a motion for reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights.

(n) A parent whose rights are reinstated pursuant to this section is not liable for child support or the costs of any services provided to the juvenile for the period from the date of the order terminating the parent's rights to the date of the order reinstating the parent's rights."

SECTION 19. This act becomes effective October 1, 2011, and applies to actions filed or pending on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:46 p.m. this 24th day of June, 2011